duty is postponed the duty remains a charge on the deceased's property in the absence of revenue clearance. Revenue clearance is provided for by section 37(1) of the Act which provides that the Commissioner, on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof, shall, if required by the person accounting for the estate duty, give a certificate to that effect which shall discharge from any further claim for estate duty the property shown by the certificate to form the estate or part thereof as the case may be. But there is nothing in the Act to indicate that the mere fact that the Commissioner agrees to postpone payment of duty requires him to issue the certificate under section 37. Thus the certificate which is called for in clause 4 of the contract was necessary quite apart from the production of the grant if the respondent was to obtain an unencumbered title to the property, since without it the property would remain subject to the estate duty charge.

Finally, the appellants advanced, as they did in the Court of Appeal, a faint argument that they had reasonable grounds for declining to comply with the respondent's request for the production of the grant. The Court of Appeal dealt with this very shortly. They found the conclusion that the appellants acted unreasonably "irresistible." Their Lordships find it equally so.

For the reasons they have given, their Lordships dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Jacques & Lewis; Coward Chance.*

SINGAPORE REPORTS

J.B. JEYARETNAM v. GOH CHOK TONG

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.)
August 19, 1986]
[Singapore – Civil Appeal No. 90 of 1984]

Defamation – Slander – Press conference – Words uttered at – Whether defamatory of plaintiff – Distinction between office of profit and office of honour – Fair comment – Defamation Act (Cap. 32), s. 5.

Evidence – Defamation – Proof of special damage.

Practice and Procedure – Appellate Court – Findings of fact by trial judge – To accord respect to.

In the course of directing his party's political campaign to retain the Anson seat in a parliamentary by-election, the defendant held a conference with the media at which he said, *inter alia*, that he was "inclined to believe" that the plaintiff, an opposition candidate in the by-election, had engineered an exodus of some two-thirds of the audience who had attended the inauguration of the Singapore Democratic Party ("SDP"), a political party which was friendly to the plaintiff and which had invited the plaintiff as its guest speaker.

In a claim in the High Court for damages and an injunction arising out of the slander, the plaintiff's claims were dismissed with costs (see [1985] 1 M.L.J. 334). The plaintiff appealed against the decision of the High Court. Although the defendant did not file a cross-appeal, the defendant filed a Respondent's Notice wherein he contended that if the learned trial Judge had erred in holding that the words complained of were not calculated to disparage the plaintiff in his office as Secretary-General of Workers' Party, the defendant would further contend that the learned trial Judge had correctly dismissed the plaintiff's claim for damages for slander because the plaintiff's said office was an office of honour or credit and not an office of profit and the particular words complained of by the plaintiff were not actionable without proof of special damage and that there was no such proof in this case. The issues whether the words spoken were defamatory and whether they were spoken on an occasion of qualified privilege were no longer in contention.

Held, dismissing the appeal: (1) the learned trial Judge was correct in finding that quite apart from not being calculated to disparage the plaintiff in his office, the words were not actionable because they did not impute to the plaintiff the kind or quality of misconduct which would have rendered the words actionable without proof of special damage. Therefore the plaintiff had failed to establish that the words complained of was actionable without proof of special damage;

(2) the plaintiff had not proved any special damage to his office of honour;

(3) the defendant had succeeded in establishing his defence of fair comment;

(4) the plaintiff has failed to discharge his burden of proving that the defendant was actuated by express malice when he uttered the words complained of;

(5) an appellate court must give the greatest respect to the findings of facts of a trial Judge and ought not to

disturb them unless the appellate court is satisfied that the trial Judge had reached a wrong decision.

Cases referred to:

(1) *Robinson* v. *Ward* (1958) 108 L.J. 491.
(2) *Alexander* v. *Jenkins* [1892] 1 Q.B. 797.
(3) *Onslow* v. *Horne* 2 W.B.1. 750; 96 E.R. 439.
(4) *Merivale* v. *Carson* (1888) L.R. 20 Q.B.D. 275, 280.
(5) *Silkin* v. *Beaverbrook Newspapers Ltd.* [1958] 2 All E.R. 516.
(6) *Horrocks* v. *Lowe* [1975] A.C. 135.
(7) *Thomas* v. *Thomas* 1947 S.C. (H.L.) 45, 54; *Watt (or Thomas)* v. *Thomas* [1947] A.C. 484, 488.
(8) *Khoo Sit Hoh* v. *Lim Thean Tong* [1912] A.C. 323; 2 B.L.S.S. 331.
(9) *Chow Yee Wah & Anor.* v. *Choo Ah Pat* [1978] 2 M.L.J. 41.
(10) *Muthusamy* v. *Ang Nam Cheow* [1979] 2 M.L.J. 271.

COURT OF APPEAL.

J. B. Jeyaretnam in person.
Joe Grimberg for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): In the course of directing his party's political campaign to retain the Anson seat in a parliamentary by-election, the defendant held a conference with the media at which he said, *inter alia*, that he was "inclined to believe" that the plaintiff, an opposition candidate in the by-election, had engineered an exodus of some two-thirds of the audience who had attended the inauguration of the Singapore Democratic Party ("SDP"), a political party which was friendly to the plaintiff and which had invited the plaintiff as its guest speaker.

In a claim in the High Court for damages and an injunction arising out of the slander, the plaintiff's claims were dismissed with costs. Thean J. held that although the words spoken were defamatory of the plaintiff the slander was not actionable because the defamatory words were not calculated to disparage the plaintiff in the discharge of his office as Secretary-General of the Workers' Party ("WP"). That finding was sufficient to dispose of the plaintiff's claims. The learned trial Judge, however, went on to hold that at any rate the defendant had successfully established the defence of fair comment and further that the plaintiff had failed to prove that the defendant in uttering the slander was actuated by express malice, which, if established, would have disentitled the defendant the defence of fair comment. The learned trial Judge, however, rejected the defendant's plea that the slander was uttered on an occasion of qualified privilege.

Being dissatisfied with the decisions of the learned trial Judge, the plaintiff brought this appeal challenging the validity of all three conclusions as recited earlier of the learned trial Judge. No cross-appeal was filed by the defendant. Accordingly, the issues whether the words spoken were defamatory and whether they were spoken on an occasion of qualified privilege are no longer in contention. However, the defendant has filed a Respondent's Notice in which it is stated that if, as contended by the plaintiff, the learned trial Judge had erred in holding that the words complained of were not calculated to disparage the plaintiff in his office as Secretary-General of WP, the defendant will contend in any case that the learned trial Judge had correctly dismissed the plaintiff's claim for damages for slander because the plaintiff's said office was an office of honour or credit and not an office of profit and the particular words complained of by the plaintiff were not actionable without proof of special damage, and there was no such proof in this case.

The plaintiff is and was at all material times the Secretary-General of WP. On October 26, 1981 he was a candidate of his party in a by-election conducted to elect a Member of Parliament for the constituency of Anson. The defendant is the First Deputy Prime Minister in the Government of Singapore. He was at the material time Minister for Health and Second Minister for Defence and the First Organising Secretary of the Peoples' Action Party ("PAP"), the party in government. In that capacity he was responsible for his party's election activities and so far as the Anson by-election was concerned he was responsible to secure the election of the PAP candidate.

In paragraph 4 of his amended Statement of Claim the plaintiff averred that at a conference held for the media on October 26, 1981 the defendant "falsely and maliciously" spoke of the plaintiff and of his office as the Secretary-General of WP the following words:

"SDP had their inaugural earlier this month. Mr. Jeyaretnam attended. After Mr. Jeyaretnam had spoken, he left the hall, and when he left the hall 200 participants left with him. I believe the exodus was engineered. I don't think it was, it did not speak well for the SDP. It shows that the crowd, the limited crowd still look towards Mr. Jeyaretnam, for the time being as a leader of the opposition. But I am

inclined to believe that the exodus was contrived by the leader of the Workers' Party to show who is boss at this stage. And surely Mr. Chiam cannot take that trick lightly."

By paragraph 6 of the Amended Statement of Claim the plaintiff claimed that the words in their natural and ordinary meaning meant and were understood to mean that he was an opportunist, a man of base and dishonourable motives, seeking only to promote himself, to gain power for himself, and had shown by his conduct that he was not genuinely sincere in building up a credible and constructive opposition in Parliament but was out solely to seek his own glory and was accordingly unfit to hold the office of a Member of Parliament.

The defendant denied in his Amended Defence that the words bore the meanings attributed to them and further denied that he spoke or published the said words of or concerning the plaintiff in the office of Secretary-General of WP or of or concerning the plaintiff's fitness as a Parliamentary candidate. In paragraph 3 of the Amended Defence the defendant set out *ipsissima verba* the words which had preceded and followed the words complained of by the plaintiff. A reading of the entire quotation will show the textual context in which the offending words were uttered.

By paragraph 4 of the Amended Defence the defendant claimed that at any rate the words spoken by him were fair comment, spoken without malice, upon a matter of public interest, namely, the conduct of the leaders of the opposition parties, and upon the several particulars of facts set out within sub-paragraphs 4(i) to (vii) thereof. The defendant also relied on section 9 of the Defamation Act (Cap. 32) which provides that in an action for slander in respect of words consisting partly of allegations of fact and partly of expression of opinion,

"a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved."

The defendant also claimed that the occasion of publication of the said words was an occasion of qualified privilege. This averrment was not seriously pursued at the trial and Thean J. properly rejected this defence which, as we had noted earlier, is no longer in issue.

The defendant in paragraph 7 of the Amended Defence asserted that the words complained of were not actionable without proof of special damage and no special damage was alleged.

In his Amended Reply by which issues were joined, the plaintiff made the specific plea that the words complained of were not fair comment but were allegations of deliberate defamatory conduct against him. Further, it was alleged that the defendant was actuated by express malice in speaking the words, for which four particulars of facts set out in sub-paragraphs 2(i) to (iv) of the Amended Reply were relied upon.

At the trial it was established that the SDP held its inauguration on September 21, 1981 at the Singapore Conference Hall auditorium. There were about 300 participants. Chiam See Tong, the Secretary-General of SDP, invited the plaintiff as Secretary-General of WP to speak at the inauguration. The plaintiff was the first to speak after the leaders of SDP had welcomed the participants and the office-bearers had been sworn in. Thean J. found that the plaintiff was the most popular man that evening at the auditorium, receiving rounds of applause before and during his speech. He spoke at great length. One of those who attended the inauguration was Leslie Fong Yim Leong, the deputy-editor of *Straits Times* who also covered the by-election. In his evidence he said that after the plaintiff "finished the speech, he picked up his papers, came down the stage and left the hall. Almost immediately after [the plaintiff] left the hall people from all parts of the hall stood up and made their way out. I heard rustles of people getting up and the people leaving took no extra care to do so quietly. My estimate is that about 150 people left." According to Leslie Fong, only 100-120 remained in the hall 20 minutes after the plaintiff's departure. One other journalist, Giam Meng Teck, gave evidence and substantially confirmed the evidence of Leslie Fong. The plaintiff's departure was neither mentioned nor explained to the audience. It transpired that the plaintiff had to keep a dinner appointment at his home and that he had told Chiam See Tong about having to leave the meeting after his speech.

On October 14, 1981 a writ was issued for the Anson by-election. From then until nomination day there was no public announcement of any electoral alliance between WP and SDP. A newspaper, the then *"New Nation,"* reported on October 20, 1981 that both Chiam See Tong, the Secretary-General of SDP, and the plaintiff were keeping "mum" and that one week previously Chiam See Tong had said that his party Chairman, Fok Tai Loy, would be a likely candidate but

Chiam See Tong refused to confirm this piece of news. *The Straits Times* carried a report on what transpired at the nomination centre on nomination day. Leslie Fong and his assistant, Edward Wee, filed the report. It was reported on October 22, 1981 that when Chiam See Tong arrived at the nomination centre he had said: "Yes, we are going in" which Leslie Fong said in evidence he understood to mean that SDP would be contesting the by-election; that the situation became "curiouser and curiouser" when Chiam See Tong, SDP Chairman Fok Tai Loy and the plaintiff were huddled together inside the hall; and that SDP Chairman was reported to have said that "the two parties did not really come to terms over the candidacy for Anson until they met inside the hall."

The said report also mentioned that after the close of the nomination Chiam See Tong read a statement stating, *inter alia*, that SDP on learning that the plaintiff was contesting the by-election had graciously withdrawn their candidate. It was implicit in the statement that if another person had been nominated by WP, the SDP would have fielded their candidate for the by-election.

It was in those circumstances that the defendant conducted the conference for the media as part of his campaign to secure the return of the PAP candidate nominated for the Anson by-election. In the course of the conference the defendant uttered the words complained of which Thean J. found were defamatory of the plaintiff. Thean J. said in his judgment:

"The sting lay in the suggestion or implication that the plaintiff took advantage of a gesture of goodwill from the SDP – a party with which the WP had good relations – on the occasion of the SDP's inauguration for a purely selfish and self-serving purpose and engineered or contrived an exodus of a large section of the audience at the inauguration so as to project himself as the "boss' and leader of the opposition to the party in power. The words imputed to the plaintiff dishonourable or discreditable conduct or motive or a lack of integrity and such an imputation in my opinion was defamatory of the plaintiff."

It is now convenient to turn to the grounds of appeal. The plaintiff contends that the learned trial Judge had erred in law in holding that the words complained of were not calculated to disparage him in the office as Secretary-General of WP. The plaintiff reminds us that the learned trial Judge had found that the words imputed dishonourable or discreditable conduct or motive or a lack of integrity, that the defendant in another part of his verbal statement at the conference had stated that the defendant's comments were on their conduct as leaders of the opposition parties and not on their conduct as private individuals, that he had attended the SDP inauguration in his capacity as the Secretary-General of WP and that the defendant had implied that he had taken advantage of a gesture of goodwill from a friendly political party. Relying on Thean J.'s finding that "the words imputed to the plaintiff dishonourable or discreditable conduct or motive or a lack of integrity," the plaintiff contends that *Robinson* v. *Ward*[1] is clearly distinguishable. We will revert to this case later.

Learned counsel for the defendant in reply says that in this action for slander the defendant had in his Amended Defence contended that the words complained of were not actionable and that that plea touched on the scope of section 5 of the Defamation Act (Cap. 32) which is in identical terms with section 2 of the Defamation Act, 1952 of England ("the 1952 Act").

Section 5 of the Defamation Act reads:

"5. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business."

We are invited by counsel for the defendant to review and state the common law on the actionability of slanderous words before the passage of section 2 of the 1952 Act. At common law for words to be actionable without proof of special damage the words had to be spoken (a) in the way of a claimant's office; and (b) that the words must have disparaged the claimant in that office. Learned counsel for the defendant further submitted that the common law also made a distinction between offices of profit on the one hand and offices of honour or credit on the other. An action for slander lay at common law without proof of special damage in respect of an office of profit because the common law was prepared to presume the fact that special damage had been suffered: see *Alexander* v. *Jenkins*[2] to which we will also later return to remind ourselves of what fell from the lips of Lord Herschell.

However, as learned counsel stresses before us, at common law words were not actionable without proof of special damage in respect of an office of honour or credit unless the words complained of imputed corrupt or dishonest conduct, or of misconduct in the discharge of the duties of that office of honour.

Learned counsel for the defendant goes on to submit that the effect of the passage into law of section 2 of 1952 Act was simply to remove the requirement that the defamatory words had to be spoken of a claimant "in the way of his office." Learned counsel argues that section 2 altered nothing else. Proceeding on that line of argument, learned counsel for the defendant submits that in England after the 1952 Act, and in Singapore now, in order for slanderous words to be actionable without proof of special damage, (i) it must have disparaged the claimant in his office; and (ii) if that office is an office of honour, the slanderous words must have imputed corrupt or dishonest conduct, or misconduct, in the discharge by the claimant of his duties of that office. Learned counsel relies on *Robinson* v. *Ward* (*supra*). Robinson and Ward were Freemasons. At an annual general meeting of the Lodge of Instruction, of which Robinson was a preceptor, Ward was alleged to have uttered words which meant that Robinson was not a fit and proper person to be a preceptor of a masonic lodge and that he was not a fit and proper person to join a masonic lodge.

Thean J. correctly set out what was decided in *Robinson* v. *Ward* (*supra*) by Diplock J. (as he then was) in the following terms:

"Diplock J. (as he then was) held that in an action for slander for words alleged to have been spoken of a plaintiff touching his office, where such office was one of honour and not of profit and no special damage was proved, it was necessary in order to show that the words were calculated to disparage the plaintiff in his office within section 2 of the Defamation Act, 1952 to establish, in accordance with decisions prior to that Act, that the words imputed to the plaintiff some want of integrity or corrupt or dishonest conduct in the discharge of his office. That decision has stood the test of time for more than 25 years and has been quoted with acceptance by learned text book writers to be correct: see Vol. 28, *Halsbury's* Laws of England (4th edn.) para. 55 and Gatley on Libel and Slander (8th edn.) para. 174."

One of the decisions decided prior to the 1952 Act is *Alexander* v. *Jenkins & Anor.* (*supra*) where the Court of Appeal in England had reviewed the standard of proof required as regards pecuniary loss in an action for slander of a person which suggested unfitness of that person to hold an office of honour. The Court of Appeal followed the much earlier case of *Onslow* v. *Horne*[3] and held, and we quote from the headnote as it is in our view accurate, that "(w)ords spoken of a man who had been elected to the office of town councillor of a borough, alleging that he is an habitual drunkard and unfit for the office of town councillor, are not actionable, in the absence of special damage." In consequence the claimant in that case who succeeded at the trial failed in the appeal.

The issue in the Court of Appeal was succinctly stated by Lord Herschell in the course of arguments in these terms:

"The only point on which the Court wish to hear you (*i.e.* counsel for claimant who succeeded below but who eventually failed in the appellate court) is whether there is any authority for holding that an action can be maintained for an imputation of a man who holds an office, not of profit, but what has been called an office of credit and honour, when the conduct imputed would not have led to his being deprived of the office."

After pointing out that courts in the past had not required special damage to be proved in an action for slander against a claimant in his office of profit because of the practical and evidentiary rule of presumption of pecuniary losses in those cases, Lord Herschell at pp. 801 to 802 said:

"Now, it having been held that there is a distinction between that which is actionable, in the case of offices of honour or credit as compared with the case of an office of profit, the ground upon which the action has been said to be maintainable in the former case, certainly in some of the authorities, would seem to be this, that the language used has been such as, if true, would shew that the man ought to be deprived of his office, and therefore involves a risk of exclusion from that office. No case, I think, has been cited to the Court which cannot be supported on that ground. In the case of an imputation on a justice of the peace, there was certainly a risk of deprivation. The language used, if true, would have justified deprivation, and shewn that it was proper and perhaps necessary. So in the case of an action by a churchwarden, where there was an imputation on him of misconduct in his office, he too might have been deprived. But, as I have said, it is not necessary to go so far to-day as to deal with the case of an imputation on a man of misconduct in his office. All we have to deal with is merely an imputation of unfitness for the office – and there is no case in which an action of slander has been held to lie for an imputation that a man by reason of his conduct is unfit for an office, except where, by reason of that misconduct, if it existed, he could have been deprived of the office."

It will be seen that what fell from the lips of Diplock J. in *Robinson* v. *Ward* (*supra*) harked back to what was stated by the Court of Appeal in *Alexander* v. *Jenkins & Anor.* (*supra*).

Accordingly, in our judgment Thean J. was correct in concluding that this action could have been dismissed on the sole ground that the plaintiff, not having alleged or proved special damage as regards his office of honour, namely, that of the Secretary-General of WP, had failed to establish that the words complained of were actionable without proof of special damage. Thean J. was correct in finding in effect that quite apart from

not being calculated to disparage the plaintiff in his office, the words were not actionable because they did not impute to the plaintiff the kind or quality of misconduct which have rendered the words actionable without proof of special damage. Looked at another way, we agree, as counsel for the defendant urges, that the words did not impute to the plaintiff the kind of misconduct which could, or even might, have resulted in the plaintiff being deprived of his office. In the context of this case we very much doubt if straight – thinking members of WP would in all the circumstances have removed the plaintiff as Secretary-General for having exploited the SDP inauguration to his and to WP's political advantage. We therefore reject this ground of appeal.

We now turn to the plaintiff's criticisms of Thean J.'s conclusion that the defendant has succeeded in establishing his defence of fair comment. No criticism is made by the plaintiff of the four elements, which, in his judgment, the learned trial Judge said the defendant must establish in order to succeed on the plea of fair comment. These four elements in the words of Thean J. are:

"(i) the words complained of are comment, though it may consist of or include inference of facts;

(ii) the comment is on a matter of public interest;

(iii) the comment is based on facts, and

(iv) the comment is one which a fair-minded person can honestly make on the facts proved."

As regards element (ii) the plaintiff concedes that if the words complained of are comment, the comment is on a matter of public interest. His main criticisms relate to elements (i) and (iii). In considering element (i) the learned trial Judge found that the defendant first addressed himself to certain facts he had gathered from the press or of which he had been informed by a defence witness D.W.2 Seah Seng Kwang (whose evidence we would advert to later) and had drawn from those facts the inference that the exodus of about 200 persons at or about the same time of the plaintiff's departure from the hall or immediately after was engineered or contrived by the plaintiff to show who was the boss at that stage. Thean J. stated these facts in the following words (page 188 of the Record of Appeal):

"(a) the vacillating attitude of the SDP as regards contesting the by-election;

(b) the inauguration of the SDP at which the plaintiff spoke as a guest speaker;

(c) the departure of the plaintiff immediately after his speech, and

(d) the exodus of a large section of the audience, about 200 persons, at about the same time of the plaintiff's departure or immediately thereafter."

The learned trial Judge also found that the inference drawn by the defendant from these facts was a comment and not a bare or naked statement of facts and was the defendant's belief or conclusion on these facts.

The plaintiff contends that the learned trial Judge was wrong in coming to the conclusion that the inference drawn by the defendant was comment. His argument is that the learned trial Judge's conclusion was based on a wrong construction of the expression "left with him" to mean "left at about the same time of the plaintiff's departure or immediately thereafter" because by the use of the preposition "with" the defendant meant that after the plaintiff left the hall 200 participants "accompanied him" or "left in unison with him." We reject this argument as being, in our opinion, founded on a pedantic quibble over the word "with." In our opinion the interpretation of Thean J. was in accord with the context in which the word was used and in consonance with the popular usage of the word as spoken in Singapore. In our judgment the words complained of are plainly comment.

As regards element (iii) the learned trial Judge found that the comment was based on facts which the defendant had proved and which facts we have earlier set out. The plaintiff advances the same argument as to the proper construction of the preposition "with" in the context of the words "left with him" and on that argument submits that the learned trial Judge erred in finding that the comment was based on fact. We reject this argument.

Next, Thean J. considered element (iv). In directing himself on the limits of fair comment, Thean J. considered the judicial pronouncements in *Merivale* v. *Carson*[4] per Lord Esher, M.R. at pp. 280-281 and *Silkin* v. *Beaverbrook Newspapers Ltd.*[5] per Diplock J. (as he then was) at page 520. Thean J. then said in his judgment:

"Applying the objective test as laid down in the pronouncements I have just quoted at great length and on the basis of those facts as proved before me, in my judgment a fair-minded person could at that time have honestly arrived at the conclusion as the defendant did. It is significant that the defendant in arriving at this conclusion did consider the alternative conclusion, i.e. that the exodus from the SDP's inauguration was spontaneous but in such a case it did not reflect too well on the SDP, and he ruled out this alternative. Now the conclusion which the defendant arrived at may not be impartial; obviously it cannot be so. That

conclusion may be biased, may be prejudiced, may be grossly exaggerated or may even be wrong; it may be a conclusion I cannot and do not agree. But it is one which falls within the allowed limit of fair comment: it is a conclusion which a fair-minded person on the basis of those facts could have honestly arrived at. In my judgment the defendant has succeeded in establishing the four elements necessary to found his defence of fair comment."

Before us the plaintiff seeks to challenge these conclusions on the ground that the comment was not "fair." In support of his contention that the comment was not "fair" the plaintiff (a) again refers to the alleged misstatement of the defendant about 200 people leaving "with" the plaintiff, and (b) alleges that the defendant had not known of the plaintiff's departure from the hall when the comments were made. We have said enough on (a). As for (b) it arose in this way. The defendant in examination-in-chief stated that he had relied on two press reports in English when he made the comment. During cross-examination the plaintiff pointed out to the defendant that the two press reports contained nothing about the plaintiff's departure after making the speech. The defendant's memory was obviously jogged and his answer was that his branch party worker had told him about it. D.W.2, Seah Seng Kwang, was traced overnight and gave evidence the following day to the effect that he had told the defendant about the exodus following the departure of the plaintiff from the hall after the speech. Seah Seng Kwang's evidence was believed by Thean J. The plaintiff during the argument persistently refuses to accept that the defendant had a genuine and perfectly understandable lapse of memory and makes the bald and, in our view, quite unwarranted and unjustified assertion that Seah Seng Kwang's evidence was fabricated. Thean J. had the benefit of seeing and hearing the defendant and Seah Seng Kwang and, reading the notes of evidence, we are satisfied that Seah Seng Kwang had quite properly refused to be drawn into any issue not relevant to his testimony. This ground of appeal also fails.

Finally, the plaintiff submits that Thean J. was wrong in holding that he had failed to discharge the burden of proving that the defendant was actuated by express malice, the existence or otherwise of which is again a question of fact: see *Gatley* on Libel and Slander (8th edn.) para. 793. Thean J. found that the facts relied upon by the defendant in support of the plea of fair comment were true. Having found that there was a basis for the comments, Thean J. directed himself on the authority of *Horrocks* v. *Lowe*[6] as to the honesty of the views asserted by the defendant. He found that "there was no ground for disbelieving (the defendant) that the belief (the defendant) entertained was a genuine and honest one." In our judgment there is no basis for attacking Thean J.'s finding that the defendant was not actuated by express malice.

Before we part with this judgment we find it necessary to reiterate that as an appellate court we have to accord to findings of facts of a trial judge the greatest respect and ought not to disturb them unless we are satisfied that the trial judge had reached a wrong decision and that in the context of this case "any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusions" : see the speech of Lord Thankerton in *Thomas* v. *Thomas* reported under the name of *Watt (or Thomas)* v. *Thomas*.[7] These principles have been repeatedly applied by the Privy Council in several cases including *Khoo Sit Hoh* v. *Lim Thean Thong*,[8] *Chow Yee Wah & Anor.* v. *Choo Ah Pat*[9] and *Muthusamy* v. *Ang Nam Cheow*.[10]

For these reasons the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Drew & Napier; J.B. Jeyaretnam & Co.*

SIM LIM FINANCE LTD. v. HIGHLIGHT INDUSTRY PTE. LTD. & ORS.

[O.C.J. (Lai Kew Chai J.) February 26, 1986]

[Singapore – Suit No. 3309 of 1980]

Practice and Procedure – Summons for direction – Delay over a lapse of 2 years and 2 months – Third defendants application to dismiss action for want of prosecution – Exercise of court's discretion – R.S.C. 1970, O. 25 r. 1(4).

Limitation – Delay on plaintiffs' part in bringing action to trial – Non-expiry of limitation period – Court's discretion.

The issue in this application is whether the plaintiffs' action should be dismissed summarily for want of prosecution. The plaintiffs commenced this action against three defendants, including the third defendants in which they claimed as against the third defendants damages for negligence, conspiracy to do a wrongful act, damages as constructive trustee knowingly and dishonestly disposing of the trust monies and fraud. The third defendants filed their